REMARKS

During a telephone conversation with the Examiner, the undersigned attorney made a provisional election without traverse to prosecute the invention of Group I, i.e. claims 1-21 drawn to an implant. Affirmation of this election is being made by this amendment. Claims 22-32 have been withdrawn from consideration. These claims may be prosecuted in a divisional application.

Claim 1 has been amended to overcome the Examiner's formal rejections thereto, and to further define the invention over the art. Claims 2, 4-5, 8 and 10-21 have been cancelled per this amendment, without prejudice. No new matter has been added to the subject application as a result of the changes made thereto.

The Examiner's statement regarding the priority of the prior filed applications, application serial numbers 10/373,463, 10/162,533, 10/024,077 and 09/846,567, from which Applicant has claimed benefit, is noted. However, in view of the amendments to the claims made herein and the following remarks, Applicant believes that the claims as currently presented find sufficient support for the subject matter contained therein in the disclosure of the present application, and need not rely on the priority of the aforementioned prior filed applications. Thus, no specific discussion of the Examiner's statement is believed necessary.

Turning to the rejections on the art, claims 1-7, 9-13, 16 and 20 stand rejected under 35 USC 102(e) as being anticipated by Ogden (U.S. 6,299,645). Applicant respectfully submits this rejection is in error.

The Examiner points to Ogden as teaching an implant 400 that includes a load bearing surface, said surface comprising a body portion comprising a recess 408 and an undercut 406 and an insert 500 at least partially disposed in said recess 408. The insert includes a protrusion 505 at least partially received in said undercut 406 and further includes a mounting feature 410. The body portion comprises a metallic material and the insert 500 comprises a polymeric material (lines 32-33 of column 6).

To the extent that Ogden applies to newly amended independent claim 1, Applicant responds as follows.

Claim 1 has been substantially amended to require that the body portion has a load bearing surface and a bone contacting surface, the load bearing surface defining a recess and having a curvature that is based on the curvature of said patent's articular surface. Also, independent claim 1 has been amended to require an insert having a load bearing surface that has a curvature that substantially matches the curvature of the load bearing surface of the body portion, . . ., said insert comprising a resiliently deformable material configured to deform and at least partially absorb a load force being placed upon said load bearing surface of said insert.

Applicant respectfully submits that these limitations are nowhere disclosed or suggested in Ogden. For example, Ogden specifically teaches that the insert 500 "is an ultra high molecular weight polyethylene (UHMWPE)." (Column 6, lines 32-33). As the Examiner can appreciate, the UHMWPE material recited by Ogden for the insert 500 is not a resiliently deformable material, as required by independent claim 1. Moreover, and looking at the total system shown in Figures 6 and 7 of Ogden, the tibial implant 400/500 cooperates with the femoral implant 200 (Figure 7). The femoral implant 200 places a load upon the insert 500. It is important to point out that Ogden discloses an insert 500 that has a generally flat surface, as shown in Figure 6. Also, the material selected by Ogden is a hard, stiff material that does not generally give under load conditions experienced at the articular surface. Thus, when the femoral implant 200 cooperates with the tibial implant 400/500 of Ogden, it is likely that point loads will occur upon the insert 500.

In contrast, the insert of Applicant's invention of independent claim 1 is defined as having a curvature that substantially matches the curvature of the load bearing surface of the body portion. The load bearing surface of the body portion is defined as having a curvature that is based on the curvature of the patent's articular surface. Clearly, this feature is entirely missing from the Ogden reference. Likewise, the insert of Applicant's invention of independent claim 1 comprising a resiliently deformable material configured to deform and at least partially absorb a load force being placed upon said load bearing surface of said insert. Again, this feature is nowhere disclosed or suggested in Ogden.

Thus, it is respectfully submitted that Ogden could not anticipate Applicant's invention of independent claim 1 as amended. Accordingly, it is respectfully submitted that the Examiner's

rejection of claim 1, and all claims dependent thereon as being anticipated by Ogden is in error, and should be withdrawn.

Claims 1, 5, 6, 11, 12, 17 and 19 stand rejected under 35 USC 102(e) as being anticipated by Hyde et al. (US 6,599,321). Applicant respectfully submits this rejection is also in error.

To the extent that Hyde et al. applies to Applicant's invention of independent claim 1, as amended, Applicant responds as follows.

As noted above, Applicant's invention of independent claim 1 has been substantially amended to require a body portion that has a load bearing surface that has a curvature that is based on the curvature of the patent's articulate surface and an insert that has a curvature that substantially matches the curvature of the load bearing surface of the body portion and includes a resiliently deformable material configured to deform and at least partially absorb a load force being placed upon said load bearing surface of said insert.

In short, nowhere does Hyde et al. disclose or suggest the aforementioned limitations of claim 1.

Accordingly, it is respectfully submitted that claim 1 and all claims dependent thereon could not be anticipated by Hyde et al., and thus, it is respectfully submitted that the Examiner's rejection of claim 1 and all claims dependent thereon as being anticipated by Hyde et al. is in error, and should be withdrawn.

It is noted that claims 11 and 21 stand rejected under 35 USC 102(b) as being anticipated by Caspari et al. (US 5,263,498). Claims 11 and 21 have been cancelled per this amendment, thus, no specific discussion of this art rejection is believed necessary.

Claims 1, 8, 11, 14 and 15 stand rejected under 35 USC 103 as being unpatentable over the Ogden reference. Applicant respectfully submits this rejection is also in error. As set forth in detail above, Ogden fails to disclose or suggest several specific limitations now found in Applicant's invention of independent claim 1. Notably, the material selected by Ogden is a hard stiff material that would not deform and at least partially absorb a load force that is placed upon the load bearing surface of the insert. Additionally, nowhere does Ogden disclose or suggest the insert having a curvature that substantially matches the curvature of the body portion of the implant, which in turn has a curvature that is based on the curvature of the articular surface of the

patent. Instead, Ogden teaches an implant 400 having a flat profile with an insert 500 with a flat load bearing surface disposed therein.

Accordingly, it is respectfully submitted that the Examiner's rejection of claim 1 and all claims dependent thereon under 35 USC 103 has being unpatentable in view of of Ogden is in error, and should be withdrawn.

Having dealt with all the objections and rejections raised by the Examiner, it is respectfully submitted that the present application, as amended, is in condition for allowance. Thus, early allowance is earnestly solicited.

If the Examiner desires personal contact for further disposition of this case, the Examiner is invited to call the undersigned Attorney at 603.668.6560.

In the event there are any fees due, please charge them to our Deposit Account No. 50-2121.

Respectfully submitted,
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